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Attorney for Plaintiff/Certified Class
Representative Craftwood II, Inc.,
d/b/a Bay Hardware, and for the Certified
Settlement Class

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

CRAFTWOOD II, INC., a California corporation, d/b/a as Bay Hardware, individually and on behalf of all others similarly situated,

Plaintiffs,

V.

TOMY INTERNATIONAL, INC. *etc., etc.*
al.

Defendants.

Case No. SACV12-1710 DOC (ANx)

CLASS ACTION

Memorandum in Support of Joint Motion for Approval of Distributions of Uncashed Settlement Checks

Date: October 26, 2015
Time: 8:30 a.m.
Courtroom: 9D
Before: Judge David O. Carter

Discovery Cut-Off: N/A
Pre-Trial Conf.: N/A
Trial: N/A

1 Of the nearly \$7,000,000 distributed to class members in settlement of this
2 matter, there is only \$40,008.01 remaining in uncashed settlement checks. The
3 Settlement Agreement provided for this contingency and states that: "In the event
4 that there are any monies remaining of the Claims Payment Amount [i.e., the net
5 amount distributable to the class] after payment of all Shares, including monies
6 represented by Uncashed Checks, then such remaining monies will [be] distributed
7 as ordered by the Court. Settlement Class Counsel and TOMY shall make
8 recommendations or proposals to the Court as to how any such remaining monies
9 should be distributed."

10
11 Settlement Class Counsel and TOMY's counsel have met and conferred and
12 recommend that the Court approve the following distributions of the \$40,008.01¹:

13
14 1. There are three checks totaling \$11,106.14 that were re-issued at the
15 request of class members near the deadline for the cashing of checks, but were not
16 timely cashed by the deadline.² It is recommended that new checks be issued to
17 these three class members and that they be given 30 days from issuance to cash their
18 checks.

19
20 2. The remainder (including any checks of paragraph 1 that are not timely
21 cashed) be split on a 50/50 basis between (1) the Electronic Privacy Information
22 Center ("EPIC") and (2) the Ann & Robert H. Lurie Children's Hospital ("Lurie

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25 _____
26 ¹ These recommendations are severable in that the Court can accept or reject
27 all or part of the recommendations and its decisions on one or more of the
28 recommendations does not affect the other recommendations.

2 ² These three class members and the amount of their checks are as follows:
Clatsop Power Equipment (\$6,276.82); Stoltz Sales & Service (\$4,345.49) and Alba
Santana (\$482.83).

1 Children's"). EPIC was selected by Settlement Class Counsel and Lurie Children's
2 was selected by TOMY.

3
4 3. EPIC is a consumer privacy organization located in Washington D.C.,
5 and represents that it is a 501(c)(3) non-profit entity. EPIC advocates for privacy
6 rights on behalf of consumers, including under the Telephone Consumer Protection
7 Act (the statute under which this case was brought) and represents that EPIC's
8 Executive Director, helped to draft the TCPA in 1990 (Testimony of April 24, 1991
9 available at <https://archive.org/details/org.c-span.18726-1>) and EPIC currently
10 maintains three webpages on the TCPA and telemarketing protection -
11 epic.org/privacy/telemarketing,
12 [https://epic.org/privacy/telemarketing/preemptiveattack.html](http://epic.org/privacy/telemarketing/preemptiveattack.html), and
13 [https://epic.org/privacy/telemarketing/dnc/](http://epic.org/privacy/telemarketing/dnc/) - to educate and provide resources to the
14 public and provided the FCC with formal comments and recommendations on the
15 implementation of the Junk Fax Prevention Act (January 18, 2006, available at
16 [https://epic.org/privacy/telemarketing/jfpacom11806.html](http://epic.org/privacy/telemarketing/jfpacom11806.html)).³

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18 4. The Ann & Robert H. Lurie Children's Hospital of Chicago, is one of
19 the nation's leading pediatric medical centers. Lurie Children's, formerly
20 Children's Memorial Hospital, provides superior pediatric care in a setting that
21 offers the latest benefits and innovations in medical technology, research and
22 family-friendly design. As the largest pediatric healthcare provider in the Midwest
23 with a 130 year legacy of excellence, kids and their families are at the center of all
24 Lurie Children's does. In FY 2014 Lurie Children's served children from all 50

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26 3 Settlement Class Counsel is also informed that EPIC has received cy pres
27 awards in several cases, including: *Mirfasih v. Fleet Mortgage Corp.*, 01 C 722,
28 2007 WL 2608778 (N.D. Ill. Sept. 6, 2007) aff'd, 551 F.3d 682 (7th Cir. 2008); *In re Netflix Privacy Litigation*, No. 11-00379 (N.D. Cal. filed Jan. 26, 2011); *Desai v. ADT Security Services, Inc.*, No. 11-1925 (N.D. Ill. filed Mar. 21, 2011).

1 states and 48 countries. Lurie Children's treats more children insured by Medicaid
2 than any other hospital in Illinois and in FY 2014 it incurred \$88 million in losses
3 due to Medicaid reimbursement below cost of services and other uncompensated
4 costs. Philanthropy plays a critical role in accomplishing the mission of Lurie
5 Children's, especially in today's increasingly challenging health care environment.
6 The Ann & Robert H. Lurie Children's Hospital of Chicago Foundation is a
7 charitable 501(c)(3) tax-exempt organization, through which all gifts benefit Lurie
8 Children's. Further information regarding Lurie Children's, the care it provides and
9 its pediatric research and children's advocacy programs, may be found on its
10 website at: www.luriechildrens.org. As a leading provider of toys, infant and
11 mother's products, it is appropriate that TOMY has proposed that Lurie Children's,
12 an institution devoted to providing medical care to children across the country and
13 the world, receive one-half of the remaining settlement funds in this case.

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15 Craftwood and TOMY jointly request that the Court enter an order (in the
16 form concurrently lodged herewith) approving the above distributions from
17 uncashed settlement checks.

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Respectfully submitted,

Dated: September 23, 2015

Law Offices of Scott Z. Zimmermann and Payne & Fears LLP

By: _____ /s/ Scott Z. Zimmermann
Scott Z. Zimmermann
Attorneys for Plaintiff/Certified Class
Representative Craftwood II, Inc., dba Bay
Hardware, and the Certified Settlement
Class

Dated: September 23, 2015

Ice Miller LLP

By: _____ /s/ Bart Murphy
Bart Murphy
Attorneys for Defendant TOMY
International, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2015, I electronically filed the foregoing with the Clerk of the United States District Court for the Central District of California using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Scott Z. Zimmermann
Scott Z. Zimmermann